

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	
)	
To: Joint Board)	

**REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORP.
ON PROPOSALS TO MODIFY HIGH-COST UNIVERSAL SERVICE SUPPORT**

Comments filed on the Joint Board proposals to modify the rural high-cost mechanism of the Universal Service Fund (USF or Fund) reflect no consensus – across the industry or even among the members of the Joint Board – on the need, or the right approach, to modify the current system under which rural telephone companies recover USF support for providing telecommunications services to consumers living in rural, high-cost areas. The one area of widespread agreement is the nearly unanimous industry opposition to the primary common feature of the four proposals, *i.e.*, the transfer of responsibility for allocating high-cost support from the Commission to state regulators. The comments thus offer virtually no support for moving forward on the proposals on which the Joint Board requested comment.

Instead, as TDS Telecommunications Corp. (TDS) has repeatedly urged in this and related proceedings, the Joint Board should (1) give primacy to rural consumers and to the Congressional principles underlying the universal service program, and (2) refocus its attention on refining USF support programs to ensure that funds are expended rationally and in direct furtherance of the goals of universal service. Concerns about the growth of the Fund should not lead to measures that undermine the rural high-cost program, which continues to work effectively to deliver high-quality, evolving telecommunications service to rural communities.

Reform of the mechanism through which wireless competitive eligible telecommunications carriers (CETCs) recover USF support offers a much better opportunity for enhancing the accountability and efficiency of the Fund.

I. COMMENTS REFLECT WIDESPREAD OPPOSITION TO STATE ALLOCATION PROPOSALS

Commenters from all segments of the industry,¹ and even some state regulators,² express reservations about the viability of a rural high-cost mechanism under which state regulators would determine support levels to be paid to carriers serving rural areas. These commenters contend that the proposals are both unlawful and inconsistent with the public interest.

Commenters challenge the legality of the Joint Board's "block grant" proposals on a number of grounds. Several commenters argue that the proposals to shift allocation authority to the states would represent an illegal "subdelegation" of Commission authority without Congressional authorization.³ The Western Telecommunications Alliance added that

¹ See, e.g., Comments of the National Association of State Utility Consumer Advocates, CC Docket No. 96-45, at 27-30 (filed Sept. 30, 2005) (*NASUCA Comments*); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, CC Docket No. 96-45, at 7-11 (filed Sept. 30, 2005) (*OPASTCO Comments*); Comments of the Western Telecommunications Alliance and Independent Telephone and Telecommunications Alliance, CC Docket No. 96-45, at 10-22 (filed Sept. 30, 2005) (*WTA/ITTA Comments*); Comments of the National Telecommunications Cooperative Association, CC Docket No. 96-45, at 7-10 (filed Sept. 30, 2005) (*NTCA Comments*); Comments of AT&T Corp. on Proposals to Modify High-Cost Support Rules, CC Docket No. 96-45, at 6-9 (filed Sept. 30, 2005) (*AT&T Comments*); Comments of BellSouth Corporation, CC Docket No. 96-45, at 2-6 (filed Sept. 30, 2005) (*BellSouth Comments*); Comments of CTIA - The Wireless Association on Joint Board High Cost Proposals, CC Docket No. 96-45, at 13-18 (filed Sept. 30, 2005) (*CTIA Comments*); Comments of Sprint Nextel Corporation, CC Docket No. 96-45, at 12-15 (filed Sept. 30, 2005) (*Sprint Comments*).

² See Comments of the Iowa Utilities Board, CC Docket No. 96-45, at 2-3 (filed Sept. 30, 2005) (*Iowa Utilities Comments*).

³ See, e.g., *WTA/ITTA Comments* at 5-9; Initial Comments of Minnesota Independent Coalition, CC Docket No. 96-45, at 4-6 (filed Sept. 30, 2005) (citing *United States Tel. Ass'n v. FCC*, 359 F.3d 554, 556 (D.C. Cir. 2004) ("[W]hile federal agency officials may subdelegate their decision-making authority to subordinates absent evidence of contrary congressional intent, they may not subdelegate to outside entities – private or sovereign – absent affirmative evidence of authority to do so.")).

such a delegation of Commission authority could also violate the 10th Amendment by compelling states to administer a federal regulatory program.⁴

Commenters also contend that the block grant proposals are in tension with the D.C. Circuit's recent holdings in *Qwest II*.⁵ In that case, the D.C. Circuit stressed the importance of adhering to the statutory universal service principles in devising rules for allocating USF support. Citing the statutory principles, the court struck down the Commission's definition of what would constitute "sufficient" support for non-rural carriers because the definition reflected only one of the seven principles that Congress directed the Commission to follow in drafting universal service policy.⁶ Because the block grant proposals contain no clear mechanism for ensuring that rural telephone companies (and the markets they serve) receive sufficient support consistent with all the statutory principles, any rules implementing those proposals likely would not survive a legal challenge under *Qwest II*.⁷

Commenters also argued that the block grant proposals would not serve the public interest. The most common concern – shared across industry segments and by some state

⁴ *WTA/ITTA Comments* at 8-9 (citing *New York v. United States*, (505 U.S. 144 (1992))).

⁵ *Qwest Communications International, Inc. v. FCC*, 298 F.3d 1222 (D.C. Cir. 2005) (*Qwest II*).

⁶ *Id.* at 1233-34 (noting that the Commission focused only on "reasonable comparability" between urban and rural rates without acknowledging other priorities identified in the statutory principles).

⁷ *Qwest II* also calls into question any proposals under which support paid to rural telephone companies would be tied to a rate benchmark in excess of the national urban average. In *Qwest II*, the court struck down the Commission's non-rural high-cost support mechanism, which incorporated a rate benchmark of two standard deviations above the national average urban rate, on the ground that the benchmark permitted significant variance between rural and urban rates and preserved a system under which rural rates could be significantly in excess of some urban rates. *Id.* at 1236-37. The court emphasized that any rate benchmark that would be applied to limit the payment of USF support must be based on a well-developed record demonstrating the compatibility of the rate benchmark with the statutory duty to preserve and advance universal service. *Id.* at 1237 ("[T]he FCC . . . must craft a support mechanism taking into account all the factors that Congress identified in drafting the Act and its statutory obligation to preserve and advance universal service. No less important, the FCC must fully support its final decision on the basis of the record before it."). There is no evidence in any of the proposals before the Joint Board that the proposed rate benchmarks, applied by state regulators or otherwise, would ensure the preservation and advancement of universal service consistent with the statutory goals. This aspect of the proposals is thus similarly inconsistent with the *Qwest II* precedent.

regulators – is that this approach would make the universal service system far more complex and would impose substantial administrative burdens on both regulators and carriers.⁸ Commenters also noted that the emergence of fifty new regimes for determining rural high-cost support would make universal service less predictable (and potentially insufficient); would limit the industry’s ability to plan for the future; and likely would undermine the provision of high-quality, evolving telecommunications services to rural consumers as required by the statute.⁹

II. THE EXISTING RURAL HIGH-COST MECHANISM SERVES THE PUBLIC INTEREST

In contrast to the widespread and well-supported opposition to the state “block grant” proposals, there is little evidence in the record that the existing rural high-cost mechanism results in wasteful use of USF resources or otherwise requires radical reform. Some commenters urge the Joint Board to reduce rural telephone company support levels in order to slow the growth of the Fund,¹⁰ but these commenters fail to demonstrate that current support levels exceed the amounts necessary to fulfill the congressional goal of ensuring that rural consumers have access to basic and advanced telecommunications services at rates comparable to those available in urban areas.

Rural telephone company commenters note that the existing rural high-cost mechanism provides appropriate support levels to advance congressional and public policy goals.¹¹ Under the existing mechanism, rural telephone companies recover a predictable portion of their actual, embedded costs of serving rural consumers. Business imperatives ensure that

⁸ See, e.g., *Iowa Utilities Comments* at 3; *OPASTCO Comments* at 10-11; *WTA/ITTA Comments* at 16-18; *BellSouth Comments* at 4-6; *CTIA Comments* at 17-18; *Sprint Comments* at 14-15.

⁹ See, e.g., *OPASTCO Comments* at 7-11.

¹⁰ See, e.g., Comments of Qwest Communications International Inc., CC Docket No. 96-45, at 7-10 (filed Sept. 30, 2005) (*Qwest Comments*).

¹¹ See, e.g., *NTCA Comments* at 5; *OPASTCO Comments* at 2-3.

these costs, which are only partially recovered from universal service mechanisms, are efficient and no higher than necessary to serve customers. Any efficiencies and cost savings that rural telephone companies are able to achieve yield financial benefits to the companies *and* are passed through to the Fund.

In addition, the resources that are paid out of the Fund to rural telephone companies bring benefits not just to rural consumers, but to consumers and businesses nationwide. This support plays an integral role in the deployment and maintenance of the ubiquitous nationwide telecommunications infrastructure that is essential to a successful and growing national economy. Thus, the existing rural high-cost mechanism ensures that rural telephone companies have appropriate incentives to invest in providing high-quality, evolving telecommunications services to their customers *and* that the burdens on the Fund are not disproportionate to the overall benefits achieved through the payment of support.

III. REFORMING SUPPORT MECHANISMS FOR WIRELESS COMPETITIVE ELIGIBLE TELECOMMUNICATIONS CARRIERS WILL ENHANCE THE EFFICIENCY AND ACCOUNTABILITY OF THE FUND

Although the rural high-cost mechanism works effectively to support the provision of universal service by rural telephone companies, commenters have shown that this same mechanism does *not* ensure that appropriate support levels, consistent with the underlying goals of the universal service program, are paid to wireless and other CETCs.¹² There is no evidence that the costs incurred by incumbent rural telephone companies yield support levels that are sufficient, but not excessive, to bring ubiquitous and reliable wireless services to rural areas. Nor is there significant evidence that the USF support paid to wireless CETCs has resulted in the provision of services that would not have been offered in the absence of USF support.

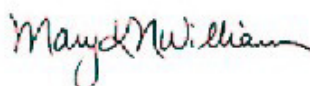
¹² See, e.g., *OPASTCO Comments* at 15-19.

Accordingly, there is significant room to reform the mechanisms for supporting wireless CETCs to ensure that the resources of the Fund are expended judiciously and in furtherance of the underlying goals of the program. One potentially viable approach, if the Joint Board and Commission determine that the Fund should be used to support wireless networks, would be to consider a separate universal service funding mechanism, within the existing Fund, to target appropriate levels of support to wireless carriers for the specific purpose of encouraging the deployment of wireless services to unserved rural areas.¹³

CONCLUSION

For the foregoing reasons, TDS urges the Joint Board to reject any proposals that would radically alter the existing rural high-cost mechanism by shifting responsibility for allocating funding to state regulators. The Joint Board and the Commission should focus their efforts on measures that will promote Fund accountability and efficiency while advancing the statutory universal service goals.

Respectfully submitted,



Gerard J. Waldron
Mary Newcomer Williams
John Blevins
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel.: 202-662-6000
Fax: 202-662-6291
Counsel to TDS Telecommunications Corp.

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¹³ See Comments of TDS Telecommunications Corp. on Proposals to Modify Rules Relating to High-Cost Universal Service Support, CC Docket No. 96-45, at 16-17 (filed Sept. 30, 2005).